

OGC 78-2939

5 May 1978

OGC REVIEW
COMPLETED

MEMORANDUM FOR: Director of Central Intelligence

VIA : Deputy Director of Central Intelligence

FROM : Anthony A. Lapham
General Counsel

SUBJECT : Certain Procedures to be Established by the DCI
and to be Approved by the Attorney General

SIGNATURE

APPROVE
CONSISTENT
WITH
JUSTICE
W

1. Action Requested: ~~None, unless you object to any of the attachments.~~ *Approval*

2. Background: As you are aware several sections of Executive Order 12036 require various heads of departments and agencies to establish procedures for certain of their organization's activities. Most of these procedures will require Attorney General approval. Either you or the ADCI have approved the first five of these procedures, all of which have been forwarded to the Department of Justice.


3. Working with the affected components within the Agency, I have now completed the next two sets, which are attached. These two sets concern the subject matters of covert procurement and assistance to law enforcement authorities within the United States.

4. Unless you have objection to either of these two, I will forward them to the Department of Justice for their review. As with the previous sets they now represent just our views; thus, they will be subject to negotiation between us and the Department. After we have reached agreement as to the final draft for each of them, I will forward them to you for formal approval. After that approval they will be sent to the Attorney General for his approval. I expect to follow the same course of action with respect to the other sets of required procedures, which remain to be drafted.

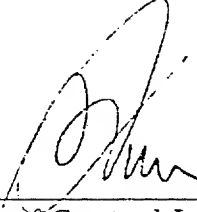
5. As with the previous procedures, individuals designated by the Deputy Directors for Operations, Administration, Science & Technology, and National Intelligence, and the Inspector General have participated with my Office

in the development of these drafts. Upon final agreement with the Department of Justice, I will seek a formal concurrence with each of those Agency officers prior to forwarding them to you for approval.

STATINTL


Anthony A. Lapham

Attachments

APPROVED : 
Director of Central Intelligence

DISAPPROVED: _____
Director of Central Intelligence

DATE : 15 MAY 1978

OGC: JED: fes

Distribution:

Original - Addressee (returned to OGC for OGC Subj: E.O. 12036)

1 - Chrono

1 - JED Signer

PROCEDURES RELATING TO COVERT PROCUREMENT

For the purposes of implementing Section 2-303 of Executive Order 12036, the Director of Central Intelligence (DCI) has established and the Attorney General has approved the following procedures relating to the procurement by the Central Intelligence Agency (CIA) and the Office of the DCI of goods and services from private companies or institutions in the United States without disclosure of CIA sponsorship to appropriate officials of the company or institution. (Such procurement is referred to in these procedures as "covert procurement.")

PROHIBITIONS

1. CIA will not contract or otherwise arrange for the provision of goods or services with an academic institution in the United States unless CIA sponsorship is known to the appropriate officials of the academic institution. This restriction and these procedures do not apply to the registration or attendance at an academic institution by a CIA employee, who is not publicly acknowledged as such. That subject is governed by the Attorney General approved procedures relating to undisclosed participation in domestic organizations.

2. CIA will not contract or otherwise arrange for the provision of goods or services with a private company or institution in the United States unless:

a. CIA sponsorship is revealed to appropriate officials of the company or organization; or

b. Concealment of CIA's sponsorship is determined by the DCI or Deputy Director of Central Intelligence (DDCI) to be necessary to maintain essential cover or proprietary arrangements for authorized intelligence purposes.

This prohibition does not, however, require a disclosure that a procurement is for CIA if the transaction is such that an individual making the same procurement in a private capacity would not be expected to disclose a principal for whom such individual was acting.

3. CIA will not request or otherwise encourage, directly or indirectly, any foreign person, organization or government agency to undertake any activity forbidden under these procedures.

PERMITTED ACTIVITIES

Approved For Release 2002/05/29 : CIA-RDP85-00988R000400110062-9

4. Covert procurement is lawful and permissible if it is determined by the DCI or DDCI to be necessary:

a. to maintain the cover of CIA employees, activities, programs or facilities which are not publicly acknowledged as such by the United States Government;

b. to develop associations or credentials to be utilized in the collection of foreign intelligence or counterintelligence*; or

c. to protect the fact or extent of CIA interest or expertise in particular technologies or foreign intelligence subject matters.

5. In determining whether covert procurement is necessary to maintain essential cover or proprietary arrangements for authorized intelligence purposes, the DCI or DDCI will take into account the following considerations:

a. the importance of the procurement activity;

b. whether the purpose could be served if CIA sponsorship were disclosed;

c. whether the cover of CIA employees, activities, programs or facilities would be compromised or jeopardized if CIA sponsorship were disclosed;

d. whether CIA's level of interest or expertise in a particular field would be revealed if CIA sponsorship were disclosed, but only to the extent that these are valid reasons for concealing such information;

e. whether CIA's interest in and capabilities concerning specific foreign intelligence or counterintelligence objectives would be jeopardized or disclosed; and

f. whether, if CIA undertook a covert procurement and CIA's sponsorship was subsequently disclosed, the party with which CIA undertook the procurement would suffer any adverse consequences including embarrassment and whether such consequences outweigh the importance of the procurement.

*The collection of information by the CIA within the United States and the conduct of counterintelligence by CIA within the United States are the subjects of other procedures.

Approved For Release 2002/05/29 : CIA-RDP85-00988R000400110062-9

APPROVAL PROCEDURES FOR PERMITTED ACTIVITIES
Approved For Release 2002/05/29 : CIA-RDP85-00988R000400110062-9

6. Recommendations to the DCI or DDCI for his approval of covert procurement need not be made on an individual case-by-case basis. Such recommendation may cover classes or categories of cases. Each recommendation will contain a statement of the facts and circumstances relied upon to support a determination by the DCI or DDCI that the covert procurement is necessary to maintain essential cover or proprietary arrangements for one or more of the authorized intelligence purposes noted in paragraph 4 above, in light of the considerations noted in paragraph 5 above.

7. All recommendations to the DCI or DDCI for his determination that a covert procurement is necessary to maintain essential cover or proprietary arrangements for authorized intelligence purposes shall be forwarded through the General Counsel, CIA.

8. Where necessary, a recommendation to the DCI or the DDCI may be oral, and authorization may also be oral, but in these circumstances the recommendation will otherwise be in conformance with these procedures and will be confirmed as promptly as possible in writing.

9. Nothing in these procedures shall prohibit the retention and dissemination of information necessary for the purpose of determining or assuring that the requirements of these procedures are satisfied.

10. Nothing in these procedures shall prohibit CIA from participating with any other Federal department or agency in joint procurement even though the actual contracting department or agency may not disclose that CIA is participating in that procurement. In such circumstances CIA is not required to disclose its participation to the party with which the other department or agency is dealing.

11. Nothing in these procedures shall prohibit CIA from procuring goods or services for other government departments or agencies or other individuals without disclosing the interest of such department, agency or individual.

12. Nothing in these procedures shall preclude a component of CIA from contracting or otherwise arranging, in its own name, for the provision of goods or services as long as there has been official acknowledgment that such component is a part of CIA.

13. No contract shall be void or voidable for failure to comply with these procedures.

INTERPRETATION

14. All questions as to the coverage and interpretation of these procedures will be resolved by the General Counsel, in consultation where necessary with the Department of Justice. The DCI may modify these procedures upon the express approval of the Attorney General.

DEFINITIONS

15. For the purposes of these procedures the term:

a. "Academic institution" means any United States college, university or other institution of higher learning that conducts classes for credit and confers degrees.

b. "Appropriate officials of the academic institution" means any official of the institution reasonably believed to be authorized to act on the institution's behalf in relation to the activity in question.

c. "Appropriate officials of the company or organization" means any official of the company or organization reasonably believed to be authorized to act on behalf of the company or organization in relation to the activity in question.

d. "Proprietary" means a sole proprietorship, partnership, corporation, other business entity, or a closely related group of such entities controlled by a single holding company, which are created, owned or controlled by the Central Intelligence Agency, in furtherance of its assigned activities, but created, owned or controlled in such a way as to disguise any relationship between the entity and the U.S. Government.

e. "Employee" means a person employed by, assigned to, or acting for the CIA or the Office of the DCI.

f. "Foreign intelligence" means information relating to the capabilities, intentions and activities of foreign powers, organizations or persons, but not including counterintelligence except for information on international terrorist activities.

g. "Counterintelligence" means information gathered and activities conducted to protect against espionage and other clandestine intelligence activities, sabotage, international terrorist activities or assassinations conducted for or on behalf of foreign powers, organizations or persons, but not including personnel, physical, document or communications security programs.

h. "United States," when used to describe a place, includes the territories of the United States.

i. "Director of Central Intelligence" and "DCI" include the Acting Director of Central Intelligence.

Approved For Release 2002/05/29 : CIA-RDP85-00988R000400110062-9
J. Deputy Director of Central Intelligence and "DDCI"
include the Acting Deputy Director of Central Intelligence.

Date

Director of Central Intelligence

I approve the foregoing procedures in accordance with subsection 2-303 of Executive Order 12036. In my opinion covert procurement by CIA conducted pursuant to and in accordance with these procedures is lawful. Based on the authorities of the Constitution, the statutes of the United States, and Executive Order 12036, it is my opinion that these procedures form the exclusive authority by which CIA may enter into a contract or arrangement for the provision of goods or services with private companies or institutions within the United States without disclosing CIA sponsorship.

Date

Attorney General